Concurrence of Commissioner Mark J. Ferron on E-4433 on November 10, 2011.

First, I'd like to first re-iterate the 3 point position I expressed on October 20th when I voted in favor of the North Star Solar project:

1. I am **<u>deeply</u>** concerned about the potential for rising electricity costs to consumers. I am most concerned about sudden "sticker shock" – possibly wrongly attributed to RPS -- causing the public to reverse policy direction. In the end, we can talk about our concern about costs, but this Commission needs to show action. In fact, Senate Bill x1-2 governing the new 33% Renewable Portfolio Standard charges the CPUC with establishing a limitation on procurement expenditures for renewable energy resources that is explicitly "set at a level that prevents disproportionate rate impacts."

2. Although the cost containment mechanism is yet to be determined, I believe that the only practical way for this to work is for the overall value of a project to be evaluated upfront at the time of the solicitation, rather than at the end of the process as we do now. A consistent, transparent, and well-designed cost containment methodology that is part of the bid evaluation process will reduce the market uncertainty that the current process causes when an individual contract comes before the Commission for final review. In short, I believe that eleventh hour CPUC veto power should be used sparingly.

   All that said, we have contracts to approve now. During the period while this cost containment mechanism is being designed and implemented, we must pass judgment on contracts where cost is an important criteria, and often is the key criteria.

3. I believe it is inappropriate to compare the costs of a negotiated and executed contract, which may have gone through years and millions of dollars of development, with the current prices being bid into a solicitation.

Applying these principals to the Abengoa / Mojave Solar project, I can summarize my view as follows:

- The solar thermal technology of Abengoa/Mojave Solar (A/MS) is more expensive than other RPS technologies, even when compared with same vintage projects. The problem is that solar thermal has never really been price competitive with PV although it does have other benefits – such as thermal inertia, which makes is more desirable. Different technologies cost different amounts and have different attributes, so perhaps we should be differentiating our evaluations not just by solicitation cohort but also by technology. Compared with other solar thermal projects using similar technology, this project does compare favorably, perhaps reflecting the benefit of the DOE loan guarantee.

- Resource diversity by technology is worth something, and I think that denying this contract would be a severe blow to the future for solar thermal in this State. PV prices are low now, but may not be in the future, and preserving this technological option for ratepayers is very important.

- In the case of this project, we have very high viability - - the technology is tried and true, the financing is all wrapped up, and we're told that the hard hats are on and the bulldozers are ready to roll - - so we can have high confidence that this project will get built if the Commission approves it.

So in short, while the contract may not be the least cost, it offers several beneficial attributes - - less intermittency and better integration, technology diversification, connection to existing distribution, high viability - - which make it a good fit. I think that it is in the ratepayer interest to approve this contract.

We have a second-level question about whether to approve the contract as originally presented by the parties or based on the modification by Commission staff.

Abengoa/Mojave Solar is in a unique situation where they already have access to transmission. However, there is the potential for congestion on the line such that the project might not be "fully deliverable" during perhaps a few hours out of the year.

In the original contract presented by the two parties, item 41b, Abengoa has agreed to pay damages to PG&E if they do not reach full deliverability status according to our Resource Adequacy rules. The level of those penalty payments change with time and are tied to the Resource Adequacy market.

Of course, in order to avoid these penalty payments, Abengoa has a strong incentive to see that a new transmission line is built. However, Abengoa knew when they signed this contract that they were assuming the risk that the line might not be built. From my perspective, we can approve this option without promising anything further about our future deliberations on this question of transmission.

In item 41a, staff removed provisions relating to Abengoa paying damages if resource adequacy is not provided in an attempt to reduce the risk of the project and improve ratepayer value. However, I don't believe that these revisions have this effect. The economics of this project depend crucially on the financing via a DOE Loan Guarantee and that guarantee was granted on the basis of the existing PPA. Given that the Loan Guarantee program has expired and resources at DOE are being redeployed, I believe there is a significant chance that changing the terms of the PPA at this stage could jeopardize the Loan Guarantee and hence the project.

From my perspective, we can approve this contract without promising anything further about our future deliberations on this question of transmission. We also need to do a serious examination and perhaps harmonization of RPS procurement and our RA rules so that these types of contractual contortions can be avoided in the future.

With that, I will be offering my support on 41b.

Dated November 10, 2011 in San Francisco

Mark J. Ferron
Commissioner